

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 09CR3330 WQH

vs.
LUCIA ROMERO-GOMEZ,

ORDER

Defendant.

HAYES, Judge:

The matters before the Court are the motion to dismiss the indictment and the motion to suppress statements filed by the Defendant Lucia Romero-Gomez. ECF No. 58-1 and 58-2.

BACKGROUND FACTS

On August 24, 2009, government agents stopped the Defendant Lucia Romero-Gomez entering the United States through the San Ysidro Port of Entry. Defendant was the driver and sole visible occupant of a Dodge pickup truck. Two individuals were found by law enforcement agents concealed behind the driver's seat lying on top of one another, Felix Diaz-Sandoval and Jesus Larios-Mejia.

Defendant was arrested. Defendant was informed of her *Miranda* rights, and signed a form entitled "WARNING AS TO RIGHTS" which included a "WAIVER." ECF No. 59-1 at 2. Defendant was interviewed and made statements to law enforcement agents.

Customs and Border Protection officers conducted a videotaped interview of the two

1 individuals concealed behind the seat of Defendant's vehicle. Felix Diaz-Sandoval stated that
 2 he was a citizen and national of Mexico who agreed to pay \$3500 to be smuggled into the
 3 United States. Diaz-Sandoval stated that he was loaded into the vehicle and heard a woman's
 4 voice as they were waiting in line, but could not identify the Defendant. Agents retained
 5 Diaz-Sandoval as a material witness. Jesus Larios-Mejia stated that he was a citizen and
 6 national of Mexico who agreed to be smuggled into the United States. Larios-Mejia stated that
 7 he was loaded into the vehicle in a carport prior to crossing the border, and that he saw an
 8 English-speaking woman next to the vehicle wearing blue jeans but did not see her face. After
 9 the interview, Larios-Mejia was granted voluntary departure.

10 On October 16, 2009, a videotaped deposition of Felix Diaz-Sandoval was conducted.
 11 At the deposition, Diaz-Sandoval stated that the Defendant was present when he was loaded
 12 into the vehicle. Diaz-Sandoval stated that she spoke to him in English when he entered the
 13 vehicle and that she told him not to move as they approached the port of entry.

14 RULING OF THE COURT

15 1. Motion to Dismiss Indictment

16 Defendant contends that the Court should dismiss the indictment on the grounds that
 17 government agents deported one of the two material witnesses found behind the driver's seat.
 18 Defendant contends that the Government has deprived her of her right to a fair trial though its
 19 intentional release of an eyewitness. The Government asserts that the Defendant has not made
 20 any showing of bad faith by the government agents or prejudice to the Defendant's case.

21 The right to retain a deportable alien witness is based upon the Fifth Amendment
 22 guarantee of due process of law and the Sixth Amendment guarantee of compulsory process
 23 for obtaining witnesses in one's favor. *See United States v. Medina-Villa*, 567 F.3d 507, 516
 24 (9th Cir. 2009). In *United States v. Dring*, 930 F.2d 687, 693 (9th Cir. 1991), the Court of
 25 Appeals explained:

26 In cases of constitutionally guaranteed access to evidence, wherein the
 27 Government loses potentially exculpatory evidence, the Supreme Court applies
 28 a two-pronged test of bad faith and prejudice.... Under this two-pronged test, the
 defendant must make an initial showing that the Government acted in bad faith
and that this conduct resulted in prejudice to the defendant's case. To prevail
 under the prejudice prong, the defendant must at least make 'a plausible showing

1 that the testimony of the deported witnesses would have been material and
 2 favorable to his defense, in ways not merely cumulative to the testimony of
 3 available witnesses.'

4 *Id.* quoting *United States v. Valenzuela Bernal*, 458 U.S. 858, 873 (1982). "To establish that
 5 the government acted in bad faith, [the defendant] must show either that the Government
 6 departed from normal deportation procedures or that the Government deported [the witness]
 7 to gain an unfair tactical advantage over him at trial." *Medina-Villa*, 567 F.3d at 517-518
 8 (quotation and citation omitted).

9 In this case, government agents tape recorded interviews with the two material
 10 witnesses and allowed one of the witnesses voluntary departure. There is no showing that
 11 government agents deported the material witness to gain an unfair advantage or that the agents
 12 departed from normal deportation procedure. The Court concludes that there are no facts to
 13 support an inference of bad faith by government agents and no facts to support an inference
 14 of prejudice to the Defendant's case. Defendant's motion to dismiss the indictment is denied.

15 **2. Motion to Suppress Statements**

16 Defendant moves to suppress her statements made following *Miranda* warnings on the
 17 grounds that her waiver of *Miranda* rights was not freely and voluntarily given.¹ The
 18 Government asserts that the post-arrest statements are admissible because the Defendant
 19 knowingly, intelligently, and voluntarily waived her *Miranda* rights.

20 In order for inculpatory statements made by a defendant during custodial interrogation
 21 to be admissible in evidence, the defendant's "waiver of Miranda rights must be voluntary,
 22 knowing, and intelligent." *United States v. Binder*, 769 F.2d 595, 599 (9th Cir. 1985). In order
 23 to be knowing and intelligent, "the waiver must have been made with full awareness of both
 24 the nature of the right being abandoned and the consequences of the decision to abandon it."
 25 *Moran v. Burdine*, 475 U.S. 412, 421 (1986).

26 The Government bears the burden of establishing the existence of a valid waiver of
 27 *Miranda* rights. *North Carolina v. Butler*, 441 U.S. 369, 374-75 (1979). The validity of a

28 ¹ Defendant's motion to suppress pre-*Miranda* statements is not addressed by the Government
 29 and does not appear to be at issue.

1 waiver depends upon the particular facts and circumstances of the case, including the
2 background, experience and conduct of the defendant. *Edwards v. Arizona*, 451 U.S. 477, 482
3 (1981). “Several factors to consider are (i) defendant’s mental capacity; (ii) whether the
4 defendant signed a written waiver; (iii) whether the defendant was advised in his native tongue
5 or had a translator; (iv) whether the defendant appeared to understand his rights; (v) whether
6 the defendant’s rights were individually and repeatedly explained to him; and (vi) whether the
7 defendant had prior experience with the criminal justice system.” *United States v. Crews*, 502
8 F.3d 1130, 1140 (9th Cir. 2007).

9 In this case, Defendant’s advisal of *Miranda* rights and her post-arrest statement were
10 video-recorded. The only evidence submitted in the record is the “WAIVER” signed by the
11 Defendant which states that “I am willing to make a statement and answer questions. I do not
12 want a lawyer at this time. I understand and know what I am doing. No promises or threats
13 have been made to me and no pressure or coercion of any kind is being used against me.” ECF
14 No. 59-1 at 2. The Court concludes that the written waiver is adequate to carry the
15 Government’s burden to demonstrate that *Miranda* rights were given and knowingly and
16 intelligently waived. There are no facts and circumstances in this case to support the
17 conclusion that Defendant’s waiver of *Miranda* rights was not a knowing and intelligent
18 waiver. Defendant’s motion to suppress statements is denied.

19 IT IS HEREBY ORDERED that the motions to dismiss the indictment ECF No. 58-1
20 and to suppress statements ECF No. 58-2 filed by the Defendant Lucia Romero-Gomez are
21 denied.

22 DATED: February 8, 2011

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24 WILLIAM Q. HAYES
25 United States District Judge
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